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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,232

06/08/2006

Laurence Pollet

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EXAMINER

EDWARDS, NEWTON O

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/579,232	POLLET ET AL.	
	Examiner	Art Unit	
	N. EDWARDS	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,11-14 and 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4,7-10 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/12/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of group I claims 1-5 in the reply filed on 1/22/09 is acknowledged. In accordance with the election of species requirement Jeffery Bousquet elected glass fiber for claim 4, inorganic material for claim 1, first and second matrix is polyvinyl chloride for claim 10, and zinc hydroxystannate for claim 15. Thus claims 5, 6, 11-14, and 16-21 are with drawn from consideration as being directed to non elected inventions.

2. The traversal is on the ground(s) that the composite yarn comprising a filament yarn coated with a polymer material containing a **foaming system**(claim 2).

3. This is not found persuasive because nowhere in independent claims 1 is the above found. ISPE10.06 state Unity of invention only need to be determined in the independent claim not the dependent claims. Thus the issue is moot.

The requirement is still deemed proper and is therefore made FINAL.

Applicant urge that 1) a composite yarn can have **its fiber uniformly distributed in a polymer while maintaining a twist relationship between the fiber over the length of the yarn.**

As I told you during the interview of 11/5/2008, You do not have support for the above in your specification, drawings, or claims, so if you added it to your disclosure it would be New Matter. As you already know, the Primary Examiner did not write your claims, spec, textile dictionary, or the patents which define what a composite yarn. Your claims will be given the broadest reasonable interpretation for examination noting that applicant spec has failed to define the meaning of a composite yarn.

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4. Claims 1, 2, 3, 4, 7, 8, 9, 10, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 1 "composite yarn.." is vague and indefinite as to the meaning of the phrase.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 3, 4, 7, and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 62028435 (date 2/6/1987).

JP 62028435 teaches a material having inorganic fiber yarn (composite yarn) having a surface coated with a porous polymer (foamed polymer). JP 62028435 further teaches the inorganic fiber are glass fibers, see abstract.

Regarding claims 2 and 3, the invention defined by a product by process claim is a

Product and not a process. In re Bridgeford, 357 F.2d 679. It is the patentability of the product claimed and **NOT** of the recited process steps which must be established.

In re Brown, 459 F.2d 531. Thus the product defined by claims 2 and 3 is a foamed polymer which is taught by the above reference.

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7. Claims 1, 2, 3, 4, 7, 8, 9, and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Okia (GB 2,03,2483).

Okia teaches a multifilament core yarn (composite yarn) having yarns (filaments) made from glass (glass fibers) which are coated or encapsulated (incorporated) distributed in a foamed polyvinyl chloride polymer (vinyl polymer with blowing agent which another name for a foaming agent) and a stabilizer (flame retardant). See fig 2, page 1 lines 5-11 and 11113-116 for example.

Regarding claims 2 and 3, the invention defined by a product by process claim is a **Product** and not a process. In re Bridgeford, 357 F.2d 679. It is the patentability of the product claimed and **NOT** of the recited process steps which must be established.

In re Brown, 459 F.2d 531. Thus the product defined by claims 2 and 3 is a foamed polymer which is taught by the above reference.

8. Claims 1, 2, 3, 4, 7, 8, 9, and 10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rudner (US 4,265,971).

Rudner teaches a composite fiber (fiber means yarn) or composite yarn having inorganic fiber core fibers such as glass fiber enveloped by a sheath of a foamed polymer such as polyvinyl chloride resin with flame retardants. See Col.2 lines 50-65, col.3 lines 44-60, col.9 lines 22-60, col.13 lines 20-24, for example.

Regarding claims 2 and 3, the invention defined by a product by process claim is a **Product** and not a process. In re Bridgeford, 357 F.2d 679. It is the patentability of the product claimed and **NOT** of the recited process steps which must be established.

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In re Brown, 459 F.2d 531. Thus the product defined by claims 2 and 3 is a foamed polymer which is taught by the above reference.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okia or Rudner taken with Carrette (US 5,278,218).

Okia and Rudner are applied for the same reason given supra which is hereby incorporated by reference. Okia and Rudner teach all of the invention except a zinc hydroxystannate stabilizer or flame retardant. Carrette teaches it is well known in the art of PVC or polyvinyl chloride polymers to include a zinc hydroxystannate flame retardant in order to heat stabilize the polymer or remove thermal stress.

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the zinc hydroxystannate, as taught by Carrette, in the PVC polymer as taught by Rudner or Okia in order to heat stabilize the polymer and remove thermal stress.

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11. Claims 1, 2, 3, 4,8,9,10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollet (US 20050042447) taken with Rudner (US 4,265,972) or JP 62028435.

Pollet, a **Chavnoz Industrie publication or Applicant**, teaches all of the claimed Invention (composite yarn as claimed etc) except a foamed polymer. See claims 1,2,3,4,5,6, and 9 of Pollet which is hereby incorporated by reference. Rudner and JP 62028435 teaches is well known in the art of yarns to include a foamed polymer of PVC as the matrix in order to make the yarn breathable or absorb sound.

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the foamed Polymer as taught by Rudner or JP 62028435, for the polymer (PCV) as taught by Pollet, in order to make the yarn breathable and/or sound absorbing.

Regarding claims 2 and 3, the invention defined by a product by process claim is a **Product** and not a process. In re Bridgeford, 357 F.2d 679. It is the patentability of the product claimed and **NOT** of the recited process steps which must be established.

In re Brown, 459 F.2d 531. Thus the product defined by claims 2 and 3 is a foamed polymer which is taught by the above combination of references.

No claims are allowed.

The cited patents disclose the state of the prior.

Any inquiry concerning this communication should be directed to Primary Examiner Edwards at telephone number (571)272-1521.

/N Edwards/
Primary Examiner
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